HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.1345, 1346 & 1377 of 2006
And
Writ Appeal No.3 of 2007

Writ Appeal No.1345 of 2006

Between:

The Government of Andhra Pradesh, rep. by its Principal Secretary and another.

... Appellants

And

Thati Veeraswamy & others

... Respondents

Writ Appeal No.1346 of 2006

Between:

The Government of Andhra Pradesh, rep. by its Principal Secretary and another.

... Appellants

And

Ubba Venkatesh & others

... Respondents

Writ Appeal No.1377 of 2006

Between:

Budagam Srinivas

... Appellants

And

Ubba Venkatesh & others

... Respondents

Writ Appeal No.3 of 2007

Between:

Budagam Srinivas.

... Appellants

And

Thati Veeraswamy & others

... Respondents

::JUDGMENT::

Counsel for the appellants in W.A.Nos.1345 & 1346 of 2006: Shri C.V. Mohan Reddy, Advocate General assisted by Government Pleader for Cooperation

Counsel for the appellants in W.A.Nos.1377/2006 & 3/2007: Shri G. Vidya Sagar

Counsel for respondent No.1 in W.A.No.1345 of 2006: Shri K.S. Murthy

Counsel for respondent Nos.1 and 2 in W.A.No.1346 of 2002: Shri K. Vinay Kumar

January 18, 2007

Per G.S. Singhvi, CJ

Whether, in exercise of the powers conferred upon it under sub-section (1) of Section 6 read with sub-sections (1) and (2) of Section 5 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the 1966 Act'), as amended from time to time, the State Government could constitute Agricultural Market Committee for an area which is declared as Scheduled Area, is the only question, which arises for determination in these appeals filed by the Government of Andhra Pradesh and others for setting aside order dated 27-10-2006 passed by the learned Single Judge in Writ Petition Nos.16445 and 17475 of 2006, whereby he quashed notification dated
17-2-2006 issued by the State Government for constitution of Agricultural Market Committee, Bhadrachalam.

Thati Veeraswamy – respondent No.1 in Writ Appeal Nos.1345 of 2006 and 3 of 2007 and Ubba Venkatesh and Marmam Ramakrishna – respondent Nos.1 and 2 in Writ Appeal Nos.1346 and 1377 of 2006 belong to tribal community. They are residents of different villages in Bhadrachalam Mandal of Khammam District, which constitute part of Agency Area (Scheduled Area). They challenged notification dated 17-2-2006 mainly on the ground that the same is ultra vires the amended Section 4(3)(a) of the 1966 Act read with Section 4 (m)(iv) of the Panchayats (Extension to Scheduled Areas) Act, 1996 (Central Act No.40 of 1996) (for short, 'the 1996 Act'). They pleaded that by virtue of Section 4(m)(iv) of the 1996 Act, the power to manage village markets in the Scheduled Areas exclusively vests with the Gram Panchayats and, therefore, the State Government cannot, in exercise of the power vested in it under the 1966 Act, constitute market committees for the market situated in

such areas.

In the counter-affidavits filed on behalf of the official respondents, it was pleaded that the State Government is empowered to constitute market committee in all notified areas including the Scheduled Areas and no illegality has been committed by constituting Agricultural Market Committee, Bhadrachalam. According to the respondents, Agricultural Market Committee, Bhadrachalam has established three markets at Bhadrachalam, Kunavaram and Dummagudem much before the amendment of 1966 Act by Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment) Act, 2000 (Act No.16 of 2000) (hereinafter referred to as the '2000 Act') and, as such, the constitution of the Agricultural Market Committee by notification dated 17-2-2006 does not suffer from any legal infirmity.

The learned Single Judge, after noticing the relevant statutory provisions, held that if the amendment made in the 1966 Act by Act No.16 of 2000 is read in conjunction with the provisions of the 1996 Act, no market committee can be constituted by the State Government for the markets situated in the Scheduled Areas. Learned Single Judge further held that even though notified areas were in existence on the date of enforcement of Act No.16 of 2000, in view of the exclusion of the Scheduled Area from Section 4(3)(a) of the 1966 Act, the State Government cannot constitute market committee in respect of the notified area which forms part of Scheduled Area.

Shri C.V.Mohan Reddy, learned Advocate General and Shri G. Vidyasagar, counsel for the private appellants argued that Act No.16 of 2000 is not retrospective in character and, therefore, the amended Section 4 (3)(a) does not affect the State Government's power to constitute market committees for the areas which were

already declared as notified areas despite the fact that they may be falling within the Scheduled Areas. Learned Advocate General emphasized that even though by virtue of Section 4 (m)(iv) of the 1996 Act, the power to manage village markets situated in the Scheduled Areas vests with the Gram Panchayats, the State Government can constitute market committees for any notified area including the one falling within the Scheduled Areas. Shri G. Vidyasagar argued that the amendment made by Act No.16 of 2000 cannot be made applicable to the existing notified areas.

We have bestowed our most thoughtful consideration to the arguments of the learned counsel, but have not felt persuaded to agree with them. Rather, we are convinced that the learned Single Judge did not commit any error by quashing notification dated 17-2-2006 issued by the State Government for constitution of Agricultural Market Committee, Bhadrachalam.

Article 243-M of the Constitution, Sections 3 and 4 (m) of the 1996 Act and Sections 3, 4, 6, 7 (1), 12, 13 and 15 of the 1966 Act, which have bearing on the decision of these appeals read as under:

Article 243-M of the Constitution of India:

243-M. Part not to apply to certain areas:

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Cl. (1), and the Tribal Areas referred to in Cl. (2), of Art.244.

(2) … … … …

(3) … … …

…

(4) Notwithstanding anything in this Constitution,-

(a) the Legislature of a State referred to in sub-clause (a) of Cl. (2) may, by law, extend this Part to that State, except the areas, if any, referred to in Cl. (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total

membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in Cl. (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Art.368.

Sections 3 and 4(m) of the 1996 Act:

3. Extension of Part IX of the Constitution:

The provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in S. 4.

4. Exceptions and modifications to Part IX of the Constitution:

Notwithstanding anything contained under Constitution of India, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely :-

… … … … … … … … … …

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;
(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

Sections 3, 4, 6, 7 (1), 12, 13 and 15 of the 1966 Act.

3. Declaration of notified area:-

(1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification.

(2) Such notification shall state that any objections or suggestions which may be received by the Government from any person within a period to be specified therein will be considered by them.

(3) After the expiration of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification.

(4) Subject to the provisions of sub sections (1), (2) and (3), the Government may, by notification -

(a) exclude from a notified area, any area comprised therein; or
(b) include in any notified area, any area specified in such notification; or
(c) declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area;

Provided that where, as a result of declaration of a new notified area under this clause, the entire area comprised in an existing notified area is united to one or more notified areas, the said existing notified area shall stand abolished.

4. Constitution of a Market Committee and declaration of notified market area:-

(1) The Government shall constitute by notification a market committee for every notified area from such date as may be specified in the notification and the market committee so constituted shall be a body corporate by such name as the Government may specify in the said notification, having perpetual succession, and a common seal with power to acquire, hold and dispose of property and may, by its corporate name, sue and be sued ;

Provided that any market committee functioning immediately before such constitution in respect of a notified area abolished under the proviso to clause (c) of sub section (4) of Section 3 shall stand abolished.

(1-A) Any notification made under sub section (1) for the constitution of a new market committee in respect of any new notified area declared under clause (c) of sub section (4) of Section 3, may contain such supplemental, incidental and consequential provisions, including provisions as to the composition of the new market committee or new and existing market committees and the apportionment of the assets and liabilities between the market committees affected thereby.

(2) It shall be the duty of the market committee to enforce the provisions of this Act and the rules and bye laws made thereunder in the notified area.

(3) (a) Every market committee shall establish in the notified area excluding the Scheduled Areas such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government

from time to time, by a general or special order.
(b) Every market committee shall also establish in the notified area such number of markets as the Government may, from time to time, direct for the purchase and sale, solely of vegetables or fruits and shall provide such facilities in the market as may be specified by the Government from time to time by a general or special order.
(c) The market committee shall declare, by notification, the limits of every market established by it under clauses (a) and (b) (hereinafter referred to as the market area).

(4) As soon as may be after the establishment of a market under sub section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of this Act in respect of any notified agricultural produce, livestock or products of livestock.

(5) Subject to the provisions of sub-sections (1), (2), (3) and (4), the Government may, by notification -

(a) exclude from a notified market area, any area comprised therein ; or

(b) include in any notified market area, any area specified in such notification:

6. Reconstitution of the market committee:-
(1) The Government shall reconstitute the market committee on the expiration of the term of office of the members of the market committee or of the term as extended under sub section (2).

(2) The Government may extend the term of office of the members of a market committee for a period not exceeding one year.

Provided that no such extension shall be given for a period exceeding six months at a time.

(3) (a) Where, for any reason, there is delay in the constitution or reconstitution of the market committee in accordance with

the provisions of this Act, the Government may appoint a person or persons to manage the affairs of the market committee until the market committee is reconstituted.

(b) The person or persons so appointed shall, subject to the control of the Government and to such instructions or directions as they may issue from time to time, exercise the powers, discharge the duties and perform the functions of the market committee and take all such action as may be required in the interests of the market committee.

(c) The Government may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the market committee shall be payable out of the Market Committee Fund.

(d) The Government may at any time, and shall at the expiration of the period of appointment of person or persons so appointed, arrange for the constitution or reconstitution of the market committee in accordance with the provisions of this Act. The person or persons so appointed shall cease to manage the affairs of the market committee on such constitution or reconstitution.

7. Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area:-

(1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce, livestock or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee:

Provided that the market committee may exempt from the provisions of this sub section any person who carries on the business of purchasing or selling any notified agricultural produce, livestock or products of livestock not exceeding such value as may be prescribed:

Provided further that a person selling notified agricultural produce, livestock or products of livestock grown, reared or

produced by him, shall be exempted from the provisions of this sub section, but the Government may for special reasons to be recorded in writing, withdraw such exemption in respect of any such person.

Provided also that the market committee shall not renew the licence granted under this section, unless the licensee pays all the arrears of amounts due to it under provisions of this Act.

Explanation: Nothing in the second proviso to this sub section shall be construed as exempting a co operative marketing society registered or deemed to be registered under the Andhra Pradesh Co operative Societies Act, 1964, selling notified agricultural produce, livestock or products of livestock grown, reared or produced by any of its members.

12.Levy of fees by the market committee:-

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding two rupees as may be specified in the bye laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I: For the purpose of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

Explanation II: In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

(2) The fees referred to in sub section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock ;

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller.

13. Levy of subscription for market reports etc.:-

The market committee may, in accordance with such rules as may be made in this behalf, levy a subscription for collecting and disseminating among the subscribers, information as to any matter relating to statistics or marketing in respect of notified agricultural produce, livestock or products of livestock.

15. Purposes for which the Market Committee Fund may be expended:-

Subject to the provisions of Section 14, the Market Committee Fund shall be expended for all or any of the following purposes, namely :

(i) the acquisition of site for the market ;

(ii) the establishment, maintenance and improvement of the market;

(iii) the construction and maintenance of buildings necessary for the market and for the health, convenience and safety of the persons using the market and maintenance of buildings under the control of the market committee;

(iv) the provision and maintenance of standard weights and measures;

(v) the pay, pensions, leave allowances, gratuities, compassionate allowances and contribution towards leave allowances, pensions or provident fund of officers and servants employed by the market committee;

(vi) the payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans ;

(vii) the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of

livestock ;

(viii) schemes for the extension or cultural improvement of notified agricultural produce, livestock and products of livestock within the notified area, including the grant, subject to the approval of the Government, of financial aid to the schemes for such extension or improvement within such area, undertaken by other bodies or individuals ;

(ix) propaganda for the improvement of agriculture, livestock and products of livestock and thrift ;

(x) (……)

(xi) the promotion of grading services ;

(xii) measures for the preservation of foodgrains ;

(xii-a) (……)

(xiii) such other purposes as may be specified by the Government by general or special order.

An analysis of the provisions of the 1966 Act shows that for regulating the sale and purchase of specified agricultural products, livestock or products of livestock, the State Government can notify a particular area as notified area (Section 3).

Section 4 (1) casts a duty on the State Government to constitute a market committee for every notified area. Section 6 provides for reconstitution of the market committee. Section 7 declares that no person shall set up, establish or use or continue or allowed to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock within a notified area except under and in accordance with the conditions of licence granted by the market committee. Section 12 provides for levy of fee by the market

committee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. Section 13 empowers the market committee to levy a subscription for collecting and disseminating among the subscribers, information relating to statistics or marketing in respect of notified agricultural produce etc. Section 15 provides for spending of the market fund.

If Section 4 (3) had not been amended by the Andhra Pradesh Act No.16 of 2000, then an anomalous situation would have arisen inasmuch as even after constitution of the market committee by the State Government, the control of the markets situated in the Scheduled Areas would have remained with the Gram Panchayats. However, the fact of the matter is that in order to remove the apparent anomaly between the Central Legislation and the State Legislation i.e. the 1996 Act and the 1966 Act, the State Legislature enacted the 2000 Act and excluded Scheduled Areas from the ambit of Section 4 (3)(a) of the 1966 Act, which casts a duty on every market committee to establish markets in the notified areas as per the directions of the government for the purchase and sale of any notified agricultural produce, livestock and products of livestock and provide facilities in such market, as specified by the government from time to time, by a general or special order. With this amendment, the market committees have been denuded of the power to establish markets in the Scheduled Areas and the management of the markets falling within the Scheduled Areas is the exclusive preserve of the Gram Panchayats.

In our opinion, when the market committee cannot establish markets in the Scheduled Area, it cannot exercise powers and discharge functions specified in Sections 3, 7, 12 and 13 in respect of the markets situated in the Scheduled Areas. Thus, there cannot be

any legal sanctity for constituting a market committee for the markets falling within the notified area, which forms part of the Scheduled Area.

For the reasons stated above, we hold that the learned Single Judge did not commit any error by quashing notification dated 17-2-2006 and the appeals are liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeals, miscellaneous applications filed by the appellants for interim relief are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

January 18, 2007

svs